No. 82-378

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

COASTAL PETROLEUM COMPANY,
Petitioner,

v.

MOBIL OIL CORPORATION,
THE FLORIDA DEPARTMENT OF
NATURAL RESOURCES, and
THE BOARD OF TRUSTEES OF THE FLORIDA IN-
TERNAL IMPROVEMENT TRUST FUND,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT MOBIL OIL CORPORATION

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QUESTIONS PRESENTED

1. Whether the Court of Appeals' holding that Florida law determines the validity of the State's conveyances of lands it allegedly acquired under the equal footing doctrine conflicts with this Court's decision in *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921).

2. Whether the Court of Appeals' decision that plaintiff Mobil Oil Corporation's reply counterclaim does not present a question of federal law is consistent with applicable decisions of this Court.

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The opinions below are reproduced in petitioner's appendix. Respondent accepts petitioner's statements of jurisdiction and of the statute involved. Respondent has restated the questions presented as hereinbefore stated.

STATEMENT OF THE CASE[1]

This action began in 1976 as a Florida state court suit for a declaratory judgment and was litigated for three years in the Florida courts. After Mobil, the original plaintiff, had prevailed on the original claim and two Coastal counterclaims, and all appeals had been perfected,[2] the State of Florida, joined by Coastal, removed the case to federal court in December, 1979, on the basis of a Mobil pleading in reply to a counterclaim.[3]

By its removal petition, the State asserted that Mobil's new pleading raised a substantial federal question by challenging the State's sovereignty claim, under the equal footing doctrine, to the lands in question.[4]

The district judge denied Mobil's motion to remand, ruling that "determination of the validity of the sovereignty claim depends on the navigability of the rivers in issue at statehood, a federal question," despite the circumstance

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[1]Petitioner's statement of the case does not fairly describe the lengthy and expensive proceedings in the Florida courts prior to removal.

[2]*Coastal Petroleum Company v. Mobil Oil Corp.*, 378 So.2d 336 (Fla. 1st DCA), *cert. denied*, 386 So.2d 635 (Fla. 1980).

[3]The record below demonstrates that Mobil's "reply counterclaim," upon which removal was based, was responsive to Coastal's attempt to change forums after its initial defeat in state court. Mobil stated in its initial brief in the Court of Appeals: "Expressing concern that any transfer of the second (phosphate conversion) counterclaim would entail loss of three years of judicial and litigant labor in state court, Mobil argued that its reply counterclaim would, under Florida state procedures, require retention of the second counterclaim in the original forum."

[4]Ironically, the State of Florida successfully *contested* the application of federal law to a nearly identical phosphate-mining dispute before the turn of the century, avoiding a loss on the merits of a navigability question. *State of Florida v. Charlotte Harbor Phosphate Co.*, 74 F. 578 (5th Cir. 1896).

that the question was presented in a purely intrastate land title dispute not involving any federal interest.[5]

Adhering to this Court's decision in *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977), the Court of Appeals reversed, holding that "there is no federal interest whatever in the resolution of this controversy" and that "this is a case in which, title having passed to the state, state law controls."

On May 6, 1982, after receipt of the Court of Appeals' mandate, the district judge entered an order remanding the case to the state court from which it was removed. The case is now proceeding in the state court as before removal.

The State of Florida, the removing party, has not sought review in this Court.[6] The sole petitioner is Coastal, a Florida corporation, which continues to insist upon a right to litigate its title dispute with Mobil, a New York corporation, in the federal courts after Mobil elected to commence this action in a Florida state court.[7]

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[5]Despite petitioner's suggestion to the contrary (Petition, p. 11), the Court of Appeals' decision does not affect any "navigation servitude" or other federal governmental interest. In the related litigation described by petitioner (Petition, pp. 11-12, n.3), Coastal initially joined the United States and the United States Army Corps of Engineers as parties. Both were dismissed on their own motion after assuring the district court that they had no interest in the litigation.

[6]Seemingly, the State of Florida is now willing to return to the position it urged upon this Court as one of 26 states appearing amici curiae in *Corvallis, supra:* ". . . federal supervision is not needed to protect the title of submerged land which vested in the States as an incident of sovereignty. As a sovereign, a State has its own courts and its own rules of property to protect its title." Brief for Amici Curiae, p. 26.

[7]Because the sole issue presented by the petition relates to subject matter jurisdiction, any detailed response to Coastal's mention of the federal court's injunction (Petition, pp. 3-4) would be inappropriate.

(continued)

REASONS WHY THE WRIT SHOULD BE DENIED

1. The Court of Appeals' holding that Florida law determines the validity of the State's conveyances of lands it allegedly acquired under the equal footing doctrine does not conflict with Smith v. Kansas City Title & Trust Co.

Petitioner's request for certiorari review of the Court of Appeals' decision boldly says that "*Smith* is indistinguishable from this case" and that "this case is controlled" by *Smith* (Petition, pp. 2, 5).[8] Those assertions merit threshold analysis of the two cases.

In *Smith* a shareholder sued to enjoin the corporation from investing in farm loan bonds on the ground that the authorizing act of Congress was unconstitutional. Although neither party questioned federal jurisdiction, this Court examined its own jurisdiction before rejecting the constitutional challenge on the merits. In sustaining jurisdiction, the majority opined:

> The objecting shareholder avers in the bill that the securities were issued under an unconstitutional law, and hence of no validity. It is, therefore, apparent that the controversy con-

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(footnote continued)

Nonetheless, two statements require correction. The 80-acre tract involved in Mobil's reply counterclaim is *not* also involved in state court litigation. Further, there was nothing to be "relitigated" in state court; there had been no adjudication of the phosphate-mining controversy in federal court when the Court of Appeals ordered remand to state court.

[8]In judging the credibility of these assertions, it is relevant to note that petitioner did not cite *Smith* in the Court of Appeals prior to that Court's decision. It is also noteworthy that the petition for certiorari ignores this Court's decision in *Corvallis*.

> cerns the constitutional validity of an act of Congress which is directly drawn in question.

255 U.S. at 201.[9]

By contrast, the Court of Appeals in the present case correctly concluded that this land title dispute is to be resolved by Florida rather than federal law. Its holding is epitomized by the following statements:

> The issue is whether, under Florida law, the 1862 deed to Mobil's predecessor conveyed the disputed property. That Florida chooses to answer this question by inquiring by what means it initially acquired title to the property does not alter the fact that this is a case in which, title having passed to the state, state law controls.
>
> * * * *
>
> Our conclusion that the district court has no jurisdiction of the case comports with the fact that there is no federal interest whatever in the resolution of this controversy. Federal law is appropriately indifferent to Florida's invocation or application of a federal test of navigability *as a precondition to determining a question of state law.* (Emphasis added.)

671 F.2d at 425, 426.[10]

The dissimilarity of *Smith* and the present case is manifest.

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[9]One of the cases relied on by petitioner, *International Association of Machinists v. Central Airlines*, 372 U.S. 682 (1963), has appropriately limited the *Smith* decision: ". . . we are not dealing with a suit involving an aspect of federal law which is only collateral or remote or a case where state and federal laws are so blended as to present a serious question of the scope of the arising-under provision of § 1331 or § 1337. See Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 . . . ." 372 U.S. at 695-96.

[10]"The opinion earlier noted that all parties agreed Florida had acquired title to the submerged lands prior to deeding them into private

(continued)

2. The Court of Appeals' decision is fully consistent with applicable decisions of this Court.

Petitioner's thrust is that the Court of Appeals relied "primarily" (Petition, p. 4) on the dissenting opinion in *Smith* to find an absence of federal-question jurisdiction. To the contrary, the Court's opinion, fairly read, shows that *Corvallis* is the keystone of its decision. Particularly appropriate to the present issue are the quotations from *Corvallis*, 671 F.2d at 425, emphasizing that "state law governs subsequent dispositions" whether the lands at issue did or did not pass under the equal footing doctrine. The Court of Appeals further noted that "*Corvallis* foreclosed" petitioner's argument because in this case all parties concede that the State of Florida acquired title from the United States, footnote 10, *supra*.

In *Wilson v. Omaha Indian Tribe*, 442 U.S. 653 (1979), this Court placed its own interpretation on the holding in *Corvallis:*

> The Court's conclusion in the particular dispute before it in *Corvallis* was that state law governed the rights of the riparian owner because there was no claim of an applicable federal right other than the equal footing origin of the State's title.

442 U.S. at 670.[11]

(footnote continued)
ownership in 1862. Coastal and the State contended that title passed under the equal footing doctrine at statehood in 1845, whereas Mobil contended that title passed in 1850 under the Swamp and Overflow Lands Grant Act, 9 Stat. 520, now codified at 43 U.S.C. § 982.

[11]The State of Florida also joined in an amici brief in the *Omaha Indian Tribe* case, urging that "undue confusion and forum shopping would result from the application of federal law by the federal courts and state law by state courts in adjudicating title in the same geographical area." Brief for Amici Curiae, p. 18. See footnote 6, *supra*.

The result reached in *Corvallis* is compatible with this Court's earlier declaration that "what shall be deemed a navigable water within the meaning of the local rules of property is for the determination of the several states." *Donnelly v. United States*, 228 U.S. 243, 262 (1903). See also *Archer v. Greenville Sand & Gravel Co.*, 233 U.S. 60, 68-69 (1914).

Any contrary rule allowing removal of every real property dispute that collaterally involved an ancient transfer of title from the United States would represent a vast expansion of federal jurisdiction, without serving any demonstrable federal purpose. In the present case, the decision below merely adheres to the premise that a state is the sole mistress of the rules of real property within its borders.[12]

The Court's decision in *Corvallis* unmistakably answers the issue presented by petitioner. The Court of Appeals correctly interpreted *Corvallis* to mean that federal-question jurisdiction does not exist in the present case. There simply is no need to revisit the principles reaffirmed so recently by that decision.

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[12] "Under our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States." *Corvallis, supra*, 429 U.S. at 378.

CONCLUSION

The petition for a writ of certiorari should be denied.

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